

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HORACE ALEXANDER, }  
TDCJ-CID NO.1486540, }  
Petitioner, }  
v. } CIVIL ACTION NO. H-08-2489  
} }  
NATHANIEL QUARTERMAN, }  
Respondent. }

MEMORANDUM AND ORDER ON DISMISSAL

By this petition, *pro se* state inmate Horace Alexander has filed his third federal habeas petition seeking relief under 28 U.S.C. §2254 for a 2008 conviction in the 232nd Criminal District Court of Harris County, Texas for bodily injury to a public servant in cause number 1069078. (Docket Entry No.1). Petitioner's first two federal petitions were dismissed for failure to exhaust state remedies. *Alexander v. Quarterman*, Civil Action No.H-08-1320 (S.D. Tex. 2008); *Alexander v. Quarterman*, Civil Action No.H-08-2339 (S.D. Tex. July 30, 2008). In both previous Orders dismissing the federal petitions, this Court observed that the Texas Court of Criminal Appeals had dismissed petitioner's state habeas application on April 9, 2008, because petitioner's direct appeal was pending. *Id.* Public records reflect that petitioner's direct appeal is still pending in the State's intermediate appellate court. Texas Court website.<sup>1</sup> Therefore, petitioner's claims have not been fairly presented to the highest state court in Texas and remain unexhausted. *See Castille v. Peoples*, 489 U.S. 346 (1989); *Fisher v. State*, 169 F.3d 295, 302 (5th Cir. 1999). Accordingly, this case is DISMISSED WITHOUT PREJUDICE for failure to exhaust. A certificate of appealability is DENIED. All pending motions are DENIED.

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<sup>1</sup> See <http://www.14thcoa.courts.state.tx.us/opinions/printcase.asp?FilingID=90292>

SIGNED at Houston, Texas, this 9th day of October, 2008.

Melinda Harmon  
MELINDA HARMON  
UNITED STATES DISTRICT JUDGE